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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,961	04/02/2004	Franklin D Cox		2960

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Franklin D Cox  
Hazel L Cox  
P. O. Box 22384  
35 Cibola Circle  
Santa Fe, NM 87505

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/708,961

Applicant(s)

COX ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

This application is informal in the arrangement of the specification. Applicants should review the specification of the US art used and cited in this office action as examples of specifications.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim is narrative in form and replete with functional language. The structure, that is the parts that make up the invention, must be clearly and positively specified and not what the invention does. The claim must be in one sentence form only. Note the claim language of the patents cited in this office action.

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over Gidge (US 5,622,004) in view of Hope (EP 0012011 A1).

As to claim 1, Gidge discloses a self watering plant container (Figs. 1-13) comprising a pot (2 and 3 of Fig. 4) divided into upper and lower sections (bottom of 2 in Fig. 4 divides the pot into two sections); soil in the upper section (5 of Fig. 4; col. 3 lines 19-22) and a water reservoir in the lower section (8 of Fig. 4); and, a wick (6 of Fig. 4) in contact with both sections, the wick made of a plastic tube (col. 1 lines 55-60) with peat moss therein (col. 1 lines 49-54). Not disclosed are fill and overflow tubes. Hope, however, discloses a self watering container with inlet and outlet tubes (see abstract and Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Gidge by adding inlet and outlet tubes as disclosed by Hope so as to allow for easy watering without the soil becoming water saturated.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Flasch Jr. and Stadelhofer disclose in the prior art various divided flower pots. Courtright discloses in the prior art a moss wick. Akiyama discloses in the prior art a divided pot with inlet and outlet tubes.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The

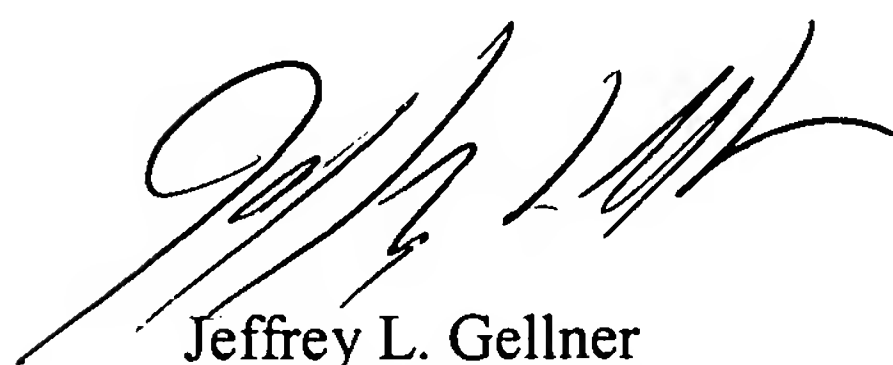
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Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', is positioned above the printed name.

Jeffrey L. Gellner  
Primary Examiner